Supreme Court, U.S.
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No. 02-789

IN THE

Supreme Court of the United States

AFRICAN METHODIST EPISCOPAL ZION CHURCH, *et al.*,
Petitioners,

v.

FROM THE HEART CHURCH MINISTRIES, INC., *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Does the Court lack jurisdiction to review an interlocutory decision of the Maryland Court of Appeals reversing partial summary judgment in a case now pending before the trial court?

2. Does the Court lack authority to review a decision of the Maryland Court of Appeals as to state law issues concerning (a) the requirements for creating and maintaining a trust under Maryland law, and (b) the evidentiary standards for rendering summary judgment under Maryland law?

3. Did the Maryland Court of Appeals correctly address constitutional requirements in applying neutral principles of Maryland law in a dispute as to the ownership of property between a religious denomination and a local church that withdrew from the denomination?

RULE 29.6
CORPORATE DISCLOSURE STATEMENT

Respondent From the Heart Church Ministries, Inc. has no parent corporation. No publicly traded corporation owns 10% or more of respondent.

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PRELIMINARY STATEMENT

This is a classic case where a partial summary judgment was reversed on appeal because the state trial court disregarded conflicting evidence as to material issues of fact in violation of the rules of procedure, and failed to apply the correct substantive law. The case has been remanded for trial. Petitioners seek review of the interlocutory ruling by the Maryland Court of Appeals reversing that summary judgment.

The Court of Appeals' decision creates no new law. Petitioners strain to concoct a conflict regarding the application of the neutral principles doctrine by the Court of Appeals and the precedents of this Court, but there is none. Under neutral principles of law applied by the Court of Appeals, this property dispute was correctly decided by applying the established property law of Maryland. *See Jones* v. *Wolf*, 443 U.S. 595, 603 (1979); *Md. & Va. Eldership of the Churches of God* v. *Church of God at Sharpsburg, Inc.*, 396 U.S. 367 (1970) (*per curiam*).

The parties to the dispute are a religious denomination and its affiliates (petitioners) and a local church and its pastor (respondents). However, the substantive issue concerns the ownership of specific property, not religious beliefs. Respondent, From the Heart Church Ministries, Inc. ("From the Heart"), is a local church in Prince George's County, Maryland. From the Heart acquired property while it was a member of petitioner, African Methodist Episcopal Zion Church ("AME Zion" or "denomination"). The property was acquired with From the Heart's own funds, in its own name, and was deeded to it without any trust. The statement in the petition that the property was "previously held in trust for AME Zion," (Pet. at 4-5), has no support in the record and is absolutely wrong. (*See* Pet. App. at 33a.)

From the Heart left the denomination in 1999. Petitioners then demanded all of From the Heart's property, claiming that it was held in trust under provisions of the denomination's Book of Discipline ("the Discipline"). (*See* Pet. App. at 54a-55a.) However, the evidence is that the property belonged to From the Heart in fee simple without any trust. From the Heart denied that it ever intended to create a trust. From the Heart's articles of incorporation and bylaws authorized it to own property in its own behalf. There is no provision in the Discipline or in the property deeds that required From the Heart's property to revert to petitioners on From the Heart's withdrawal, and no provision subjecting its personal property to a trust. Moreover, there is undisputed evidence that AME Zion openly waived the trust provisions of the Discipline eleven years before From the Heart withdrew.

The Circuit Court for Prince George's County awarded partial summary judgment to petitioners, ruling that all of From the Heart's property was held in trust for AME Zion. (*See* Pet. App. at 40a-43a.) That court made no distinction between real and personal property. Contrary to Maryland law governing summary judgment, the circuit court relied solely on the trust provisions of the Discipline and ignored all of the pleadings and evidence offered by respondents which tended to prove that no trust existed, that respondents never intended to create a trust, that personal property was not covered by the trust provisions of the Discipline, and that petitioners had waived those trust provisions. *See* Joint Rec. Extract to the Md. Ct. App. at E86-E92.

The Maryland Court of Appeals held that the circuit court failed to consider evidence that no trust was intended, and should have considered evidence that any requirement for a trust was waived, that any trust was revoked, and that personal property was outside the scope of the trust provisions of the Discipline. (*See* Pet. App. at 35a.)

In their "Question Presented," petitioners imply that the Court of Appeals directed the circuit court to "disregard the denomination's constitution." (Pet. at (i).) That statement is misleading. In fact, the Court of Appeals said the opposite, instructing the circuit court to review "*the denomination's polity, its constitution and other authoritative sources.*" (Pet. App. at 34a.) (emphasis supplied). What the Court of Appeals held was that petitioners' constitution may not be the *only* matter considered to the exclusion of other evidence, declaring "review solely of the doctrine and polity of the denomination simply is not sufficient." (*Id.*)

Ostensibly, the petition claims to support the neutral principles doctrine. In fact, petitioners urge the Court to reinterpret the doctrine out of existence and to create new law. Petitioners ask that this Court rule, as a matter of constitutional law, that Maryland must refuse to consider evidence that no trust was intended or created, or that the trust provisions of the Discipline were waived, or that any trust was revoked, or that the trust provisions of the Discipline do not refer to personal property. Petitioners would require the Court to rubberstamp AME Zion's doctrine as controlling in all property disputes, even if the evidence and state property laws require a different result. Under this bizarre interpretation of neutral principles, the denomination would become the final arbiter in all property disputes, and there would be no semblance of neutrality. The opinion below does not conflict with the decisions of this Court, and there is no conflict on matters of federal law with other states.

There is no overriding issue of national importance to justify review by this Court – particularly on an interlocutory basis. This case deals only with the application of Maryland summary judgment and trust law under the neutral principles

of law doctrine. Under neutral principles, there is no requirement for uniformity in state property laws, and the laws of other states may differ from Maryland law. Indeed, the constitutions, charters and polities of different churches also vary with respect to the ownership of church property.

Finally, the petition speculates that this property litigation will result in unconstitutional intrusions on religious freedom. The argument is fiction. The neutral principles of law doctrine is a time-tested, successful and constitutionally permissible way for states to resolve church property disputes. Petitioners cite no facts in this record or in any of the numerous church property cases decided in Maryland to sustain their contention that subjecting this property dispute to judicial determination would violate the First Amendment.

STATEMENT OF JURISDICTION

The Court is without jurisdiction to review the Maryland Court of Appeals decision for two reasons:

First, the decision is an interlocutory one for purposes of review under 28 U.S.C. § 1257(a). *See infra* Part I.

Second, in a summary judgment proceeding where the neutral principles of law doctrine calls for the application of Maryland law, the Court has "no supervisory power" to change state law regarding trusts or the standards for rendering summary judgment. *Smith* v. *Phillips*, 455 U.S. 209, 221 (1982). *See infra* Part II.

STATEMENT OF THE CASE

The Maryland Court of Appeals reversed partial summary judgment and remanded the case because the trial judge failed to consider evidence of a genuine dispute as to material facts. Maryland follows the usual rule that summary judgment may not be granted unless the court concludes there is no such dispute and that the moving parties are entitled to judgment as a matter of law. *See* Md. R. Civ. P. 2-501(a). As the Court of Appeals held, there are disputed facts as to whether From the Heart consented to create a trust of its property for the benefit of petitioners, whether petitioners waived the trust provisions of the Discipline, and whether those provisions applied to personal property. (*See* Pet. App. at 35a.)

In reversing the partial summary judgment, the Court of Appeals did not make new law, but relied on the decisions of this Court that authorize state courts to resolve property disputes involving church organizations in accordance with neutral principles of state law. (*See* Pet. App. at 1a-39a (citing to *Jones* v. *Wolf*, 443 U.S. 595 (1979); *Md. & Va. Eldership of the Churches of God* v. *Church of God at Sharpsburg, Inc.*, 396 U.S. 367 (1970); *Presbyterian Church* v. *Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440 (1969)).)

The Circuit Court Decision: The Circuit Court for Prince George's County, Maryland awarded partial summary judgment to petitioners, ruling that all the real and personal property that From the Heart acquired prior to the date it terminated its membership in AME Zion "is subject to a trust in favor of . . . AME Zion." (Pet. App. at 43a.) The circuit court based its order solely on the text of petitioners' Discipline. (*See id.* at 41a-42a.) The order did not consider

the property deeds of respondent From the Heart, which provided that the property was held in fee simple without any trust. Nor did the order consider the corporate charters and by-laws of From the Heart that authorized it to acquire and hold property in its own behalf. Moreover, the circuit court failed to consider the pleadings in which respondents denied any intention to create a trust, and failed to consider evidence presented at the summary judgment hearing that petitioners had knowingly waived any trust requirement of its Book of Discipline. *See* Joint Rec. Extract to the Md. Ct. App. at E90-E92. Without any analysis, the circuit court order placed From the Heart's personal property in the trust although the trust provisions of the Discipline do not even refer to personal property. (*See id.* at 41a-43a.)

Although the circuit court formally stated that summary judgment was entered "under the neutral principles of property law," (*id.* at 43a), the recitation was a mere formality. The circuit court did not base its ruling on any Supreme Court or Maryland authority applying the neutral principles of law doctrine, or on any authority concerning Maryland trust or property law.

The Court of Appeals Opinion: On July 24, 2002, the Maryland Court of Appeals unanimously reversed and remanded the case to the circuit court where the matter is now pending. (*See* Pet. App. at 1a-39a.) In its opinion, the Court of Appeals followed the precedents of this Court that authorize states to apply neutral principles of law in deciding church property disputes, and the line of Maryland decisions that have applied neutral principles in such property cases. In particular, the Court of Appeals relied upon this Court's decisions in *Maryland & Virginia Eldership*, 396 U.S. at 367 (upholding Maryland law applying the neutral principles

doctrine) and *Jones*, 443 U.S. at 602-03, which referred, with approval, to the Maryland Court of Appeals' application of the neutral principles of law doctrine in *Maryland & Virginia Eldership*. The Court of Appeals' opinion in this case applies the same neutral principles analysis approved by the Court in those cases.

In deciding whether church property "was impressed with a trust, express or implied, in favor of [petitioners]," the Court of Appeals applied the following principles:

> This issue must be resolved without determining ecclesiastical questions, *Mt. Olive*, 348 Md. at 310, 703 A.2d at 199, (citing *Watson* v. *Jones*, 80 U.S. (13 Wall.) at 729, 20 L. Ed. at 676-77), and by applying "neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded." *Presbyterian Church*, 393 U.S. at 449, 89 S. Ct. at 606, 21 L. Ed. 2d at 665. Stated simply, the neutral principles of law approach "relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice." *Jones* v. *Wolf*, 443 U.S. 595, 603, 99 S. Ct. 3020, 3025, 61 L. Ed. 2d 775, 785 (1979).

(Pet. App. at 27a.)

In delineating Maryland's substantive law pertaining to trusts, the Court of Appeals held that the creation of a trust "depends upon the intention of the settlor," and that "a trust will not be created where none in fact was contemplated." (*Id.* at 30a.) Under Maryland law, the burden of proof is on the party asserting a trust and that burden must be carried "by clear and convincing evidence." (*Id.* at 31a.) The Court of Appeals also declared that Maryland law provides that in the absence of a designation to the contrary a trust is revocable "by any act sufficient to manifest the settlor's intention to revoke the trust." (*Id.* at 33a.)

Contrary to what petitioners contend in their Question Presented, the Court of Appeals did *not* require the circuit court to "disregard" petitioners' constitution, *i.e.*, the Discipline. Rather, the Court of Appeals ruled that the circuit court had to consider the other relevant facts and circumstances *in addition to* petitioners' Discipline. (*See id.* at 34a.) The Court of Appeals held that on summary judgment, a review of the facts that consists "solely of the doctrine and polity of the denomination simply is not sufficient" to establish a trust. (*Id.*)

As the Court of Appeals stated, the issue is whether "there is in the record evidence, of which there is no genuine dispute, *see* Maryland Rule 2-501(a), that the church property was impressed with a trust, expressed or implied, in favor of A.M.E. Zion, as and when From the Heart acquired it." (Pet. App. at 27a.) Accordingly, the Court of Appeals reversed the partial summary judgment because the requirements for the creation of a trust under Maryland law were in dispute. (*See id.* at 33a-34a.) As the Court of Appeals stated:

> The trial court, however, did not consider the contrary evidence, i.e., From the Heart's

> intentional deeding of the property in its name only, not in trust, the national denomination's acknowledgment of, and acquiescence in, this deeding irregularity, From the Heart's amendment of its charter to remove any reference to the A.M.E. Zion church and to vest its trustees with even greater authority to control the property of the church, evidence that may be construed to suggest that From the Heart did not, in fact, consent to the trust provisions.

(*Id.* at 35a.)

REASONS FOR DENYING THE PETITION

The petition fails to make a case for review. On the jurisdictional level, the case is plainly interlocutory and does not fit within any of the recognized exceptions permitting interlocutory review under *Cox Broadcasting Corp.* v. *Cohn*, 420 U.S. 469 (1975). The petition also asks the Court to exceed its supervisory powers by overruling Maryland law as to the state's requirements for summary judgment, and to overturn Maryland's common law of trusts.

The petition asks the Court to apply the neutral principles of law doctrine in resolving church property disputes by deferring to the doctrines of the denomination, and disregarding all evidence to the contrary. That approach would eviscerate the neutral principles decisions of this Court and throw into confusion the decisional law of all the states, including Maryland, that have relied upon the neutral principles of law doctrine since 1969 when this Court announced:

> [T]here are neutral principles of law, developed for use in all property disputes, which can be

> applied without 'establishing' churches to which property is awarded. . . . [T]he [First] Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine.

Hull Mem'l Church, 393 U.S. at 449.

There is no conflict between the decision of the Maryland Court of Appeals below and the Court's neutral principles of law precedents involving church property disputes. The same approach used by the Maryland Court of Appeals in this case was sustained by the Court in *Jones* and *Maryland & Virginia Eldership*.

Nor is there a constitutional law conflict that warrants the intervention of this Court between the Maryland Court of Appeals' decision in this case and cases decided in other states that involve differences in evidence and state property laws. As shown below, most of those cases endorsed the same factual inquiry ordered by the Maryland Court of Appeals in this case and did not rely solely on denominational documents. Moreover, the Georgia and Alabama cases relied on by petitioners to establish a "conflict" have not been followed by the highest courts in those states in later decisions. The fact that different cases involving different facts decided under different state property laws may have different outcomes does not implicate the First Amendment.

In a gross misstatement, petitioners argue that the resolution of this property dispute by a civil court applying established rules of Maryland property law would result in a "freewheeling" and overly-intrusive trial in violation of the First Amendment. The claim ignores the entire body of cases

in which church property disputes have been decided under the neutral principles of law doctrine – and disregards the principle declared by this Court in *Hull Memorial Church* that "civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property." 393 U.S. at 499.

I. THE COURT LACKS JURISDICTION TO REVIEW THE INTERLOCUTORY DECISION OF THE MARYLAND COURT OF APPEALS

This Court need not even reach the merits of the petition for certiorari because, since the case was remanded for trial, there was no final judgment below. Under 28 U.S.C. § 1257(a), only "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari." As petitioners acknowledge, unless they can qualify under one of the four narrow exceptions to the rule of finality set forth in *Cox Broadcasting*, the petition must be dismissed. While petitioners attempt to rely on the third and fourth exceptions in *Cox Broadcasting*, neither applies here.

The third exception permits review of interlocutory state court decisions where the federal issue has been finally decided and would be unreviewable if the party seeking review lost on the merits. *See Cox Broad.*, 420 U.S. at 481. This exception does not apply. If respondents prevail at trial, nothing will prevent petitioners from seeking review in this Court at that time. *See Jefferson* v. *City of Tarrant*, 522 U.S. 75, 82-83 (1997). As *Cox Broadcasting* confirms, the third exception applies only where the party seeking interlocutory review will be literally prohibited from seeking review in this Court after the state proceedings are finished. *See Cox*

Broad., 420 U.S. at 481-82 (discussing *California* v. *Stewart*, 384 U.S. 436 (1966) and *North Dakota State Bd. of Pharmacy* v. *Snyder's Drug Stores, Inc.*, 414 U.S. 156 (1973)). This is not such a case, and petitioners do not even contend that an adverse decision will be unreviewable by this Court. Rather, they suggest that the third *Cox Broadcasting* exception applies because they have some sort of privilege not to be subject to a trial at all. (*See* Pet. at 21.) No such privilege exists. Church property disputes have been subject to judicial determination for decades. *See Jones*, 443 U.S. at 602.[1]

The fourth *Cox Broadcasting* exception is equally inapplicable. That exception allows review of non-final state court rulings if each of two requirements is satisfied: (1) reversing the state court ruling would actually end the litigation, "rather than merely controlling the nature and character of, or determining the admissibility of evidence in, the [later] state proceedings," and (2) failure to grant immediate review would "seriously erode federal policy." *Cox Broad.*, 420 U.S. at 482-83. Neither test is satisfied here.

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1. The three cases petitioners cite (*See* Pet. at 22 n.5) make clear that the exception does not apply. Each case involved a constitutional grant of immunity from trial. *See Abney* v. *United States*, 431 U.S. 651, 659-62 (1977) (whether proceeding to trial would have violated the Double Jeopardy Clause); *Helstoski* v. *Meanor*, 442 U.S. 500, 507-08 (1979) (a former Congressman's claim of immunity from suit under the Speech and Debate Clause); and *Mitchell* v. *Forsyth*, 472 U.S. 511, 525-28 (1985) (whether further proceedings would violate the petitioner's immunity, as a government official, from actions for money damages based on his official actions). Here, by contrast, nothing will prevent petitioners from seeking review after the remand proceedings are concluded.

First, any decision by this Court at this stage would not end the litigation as the decision appealed from involves a *partial* summary judgment. Numerous claims remain in the consolidated proceeding below including a myriad of claims in the counterclaims and countersuit filed by petitioners, such as allegations of fraud, conspiracy and usurpation, that have been consolidated with the original action. There is no reason for this Court to intervene in this litigation thicket at an interlocutory stage.

The second requirement for the fourth *Cox Broadcasting* exception – that a failure to grant interlocutory review would "seriously erode federal policy" – is also not satisfied. In this case, the Court of Appeals' decision *promotes* the federal policy of deciding church property disputes pursuant to neutral principles of law. *See Jones*, 443 U.S. at 602; *Hull Mem'l Church*, 393 U.S. at 449. Petitioners assert that there is a contrary right of religious organizations to "order[ ] their own affairs." (Pet. at 22.) That assertion begs the question. Petitioners cannot bootstrap their way into the fourth *Cox Broadcasting* exception merely by asserting that their disagreement with the Court of Appeals rises to the level of a constitutional claim. For example, in *Florida* v. *Thomas*, 532 U.S. 774 (2001), a unanimous Court dismissed a writ of certiorari for lack of a final state court decision in a criminal case involving the constitutionality of a search. The Court held that the fourth *Cox Broadcasting* exception did not apply, notwithstanding the presence of a constitutional issue, because "the State can make no claim of serious erosion of federal policy that is not common to all run-of-the-mine decisions suppressing evidence." *Thomas*, 532 U.S. at 780; *accord Flynt* v. *Ohio*, 451 U.S. 619, 621 (1981) (dismissing a writ of certiorari because there was no final decision in a state court criminal obscenity proceeding, notwithstanding petitioner's claim that he was being selectively prosecuted in violation of the Equal Protection Clause).

Unlike the few cases that have been granted interlocutory review under the fourth *Cox Broadcasting* exception, this case does not involve prior restraints on free speech or the press, or restraints on the functioning of the government. This case concerns a dispute over the ownership of property, and nothing more. *See Fort Wayne Books, Inc.* v. *Indiana*, 489 U.S. 46, 54-57 (1989); *Miami Herald Publ'g Co.* v. *Tornillo*, 418 U.S. 241, 246-47 (1974); *see also Mississippi Power & Light Co.* v. *Mississippi ex rel. Moore*, 487 U.S. 354, 370 n.11 (1988); *Belknap, Inc.* v. *Hale*, 463 U.S. 491, 497 n.5 (1983). Accordingly, the petition for certiorari must be denied under 28 U.S.C. § 1257(a).

II. THE COURT DOES NOT HAVE SUPERVISORY POWER TO DECIDE THE SUBSTANTIVE RULES OF MARYLAND PROPERTY LAW OR MARYLAND PROCEDURES GOVERNING SUMMARY JUDGMENT

It is black letter law that this Court lacks authority to override state supreme courts on issues of state law. *See Dickerson* v. *United States*, 530 U.S. 428, 438 (2000) ("It is beyond dispute that we do not hold a supervisory power over the courts of the several States."); *Smith*, 455 U.S. at 221 ("Federal courts hold no supervisory authority over state judicial proceedings and may intervene only to correct wrongs of constitutional dimension."). This rule applies both to state substantive laws and to state procedures. "'Federal judges . . . may not require the observance of any special procedures'" in state courts "'except when necessary to assure compliance with the dictates of the Federal Constitution.'" *Dickerson*, 530 U.S. at 438-39 (quoting *Harris* v. *Rivera*, 454 U.S. 339, 344-45 (1981)).

The Maryland Court of Appeals carefully described the standards for creating a trust under Maryland law. That court also set forth the requirements for summary judgment under Maryland law. This Court has no authority to interfere with the Maryland Court of Appeals' holdings as to the requirements of Maryland property law or with that court's conclusion that, under Maryland's rules of procedure, summary judgment should have been denied because there were genuine disputes as to material issues of fact.

III. THE DECISION BELOW APPLIES THE NEUTRAL PRINCIPLES DOCTRINE IN PRECISELY THE MANNER PRESCRIBED BY THIS COURT

Even before this Court announced the neutral principles doctrine in *Hull Memorial Church* and *Jones*, Maryland had been applying neutral principles of law in church property disputes. *Md. & Va. Eldership of the Churches of God* v. *Church of God at Sharpsburg, Inc.*, 241 A.2d 691 (Md. 1968) ("*Eldership I*"), *vacated and remanded*, 393 U.S. 528, *reaff'd*, 254 A.2d 162 (Md. 1969) ("*Eldership II*"), *appeal dismissed*, 396 U.S. 367 (1970).

In *Eldership I*, the Court of Appeals set out three methods that would permit a denomination to maintain control of local church property when local churches withdraw from the denomination: (i) the denomination could require a reversionary clause in the property deeds of a local church, (ii) the denomination could provide in its constitution for the reversion of local church property upon withdrawal of the local church, or (iii) the denomination could obtain a statute that provides for that result. *Eldership I*, 241 A.2d at 699. However, in *Eldership I*, as in this case, there were no reversionary provisions in the deeds or in the denomination's

constitution and there was no applicable statute. *Id.* at 700. Accordingly, the Court of Appeals examined the two local churches' articles of incorporation, property deeds and the denomination's constitution. Upon review, the Court of Appeals concluded that, under Maryland's corporation law, the local churches retained control of their property. *Id.* at 700-07. *Eldership I* was appealed to this Court, and it was remanded for reconsideration in light of *Hull Memorial Church*, which had been decided in the interim. *See Md. & Va. Eldership of the Churches of God* v. *Church of God at Sharpsburg, Inc.*, 393 U.S. 528 (1969).

On remand, in *Eldership II*, the Court of Appeals held that it had complied with *Hull Memorial Church* in all respects and had applied the neutral principles of law doctrine as promulgated in *Hull*. *Eldership II*, 254 A.2d at 170. *Eldership II* was then appealed to this Court, and, in *Maryland and Virginia Eldership of the Churches of God* v. *Church of God at Sharpsburg, Inc.*, 396 U.S. 367 (1970), the appeal was dismissed because "the Maryland court's resolution of the dispute involved no inquiry into religious doctrine." *Id.* at 368. In a concurring opinion, Justice Brennan, with Justices Douglas and Marshall joining, stated:

> '(N)eutral principles of law, developed for use in all property disputes,' *Presbyterian Church, supra*, 393 U.S. 440 at 449, 89 S. Ct. at 606, provide another means for resolving litigation over religious property. Under the 'formal title' doctrine, *civil courts can determine ownership by studying deeds, reverter clauses, and general state corporation laws.*

Id. at 370 (emphasis supplied).

Nine years later in *Jones*, this Court referred to *Eldership II* as an example of how the Court of Appeals' application of neutral principles was able to solve a church property dispute

> *on the basis of the language of the deeds, the terms of the local church charters, the state statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of church property.* Finding that this analysis entailed 'no inquiry into religious doctrine' the Court dismissed the appeal for want of a substantial federal question.

Jones, 443 U.S. at 603 (emphasis supplied).

Even the dissenting justices in *Jones* endorsed the Maryland Court of Appeals' resolution of the property dispute in *Eldership II* by examining all the relevant evidence, including

> *the constitution of the general church, the charters of the local churches, the deeds to the property at issue and the relevant state statutes. . . . [T]he state court canvassed all of these sources, and others. . . .* (citation omitted).

Id. at 612 n.1 (Powell, J., dissenting) (emphasis supplied).

In this case, the Court of Appeals followed exactly the same analysis used in *Eldership I* and *II*, which was approved in *Maryland & Virginia Eldership*, and which all nine justices in *Jones* viewed as consistent with constitutional requirements.

As applied by the Maryland Court of Appeals, the neutral principles doctrine favors neither withdrawing churches nor denominational bodies in property disputes. Withdrawing congregations have prevailed in some of the Maryland cases[2] while parent churches have prevailed in others.[3] The outcomes are based on the evidence, not on church doctrine.

Petitioners have misunderstood the thrust of *Jones*, where the Court declared that "a State may adopt any one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters." 443 U.S. at 602. Instead, petitioners selectively quote one sentence as to the possible use of a trust provision in the constitution of the general church to ensure that the denomination will retain the church property. (*See* Pet. at 2, 11-12.) However, the context of that statement shows that the Court was delineating a range of options that states may use in determining ownership in church property disputes. As *Jones* declared,

> The neutral-principles approach cannot be said to "inhibit" the free exercise of religion, any more than do other neutral provisions of state law

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2. *See Mt. Olive African Methodist Episcopal Church of Fruitland* v. *Bd. of Incorporators of the African Methodist Episcopal Church, Inc.*, 703 A.2d 194 (Md. 1997); *Eldership II*, 254 A.2d 162 (Md. 1969); *Eldership I*, 241 A.2d 691 (Md. 1968); *Smith* v. *Church of God at Locust Valley*, 326 F. Supp. 6 (D. Md. 1971) (applying Maryland law).

3. *See Babcock Mem'l Presbyterian Church* v. *Presbytery of Baltimore of the United Presbyterian Church*, 464 A.2d 1008 (Md. 1983), *cert. denied*, 465 U.S. 1027 (1984); *Polen* v. *Cox*, 267 A.2d 201 (Md. 1970).

> governing the manner in which churches own property, hire employees, or purchase goods. Under the neutral-principles approach, the outcome of a church property dispute is not foreordained. At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church.

Jones, 443 U.S. at 606.

Jones gave states an option to use a right of reversion or trust language in order to ensure that the hierarchical church can retain church property. Maryland has elected to employ the "right of reversion" option. However, petitioners did not put a reversionary provision in their Discipline, or require such a provision in the property deeds of member churches. Absent those reversionary provisions, Maryland courts apply neutral principles of law to determine whether a trust was created.

The Court of Appeals did not "disregard" the trust language in the Discipline (as petitioners' Question Presented misleadingly states); it directed the circuit court to consider the denomination's constitution, along with other relevant evidence, to determine if a trust was created. (*See* Pet. App. at 34a.) However, petitioners resist having the dispute decided on the evidence. They advocate a rule where the outcome of the neutral principles approach would be foreordained,

contrary to what the Court declared in *Jones*. 443 U.S. at 606 ("Under the neutral-principles approach, the outcome of a church property dispute is not foreordained."). Such a rule would be the very opposite of neutral, and would effectively overturn the neutral principles doctrine.

In applying neutral principles under Maryland common law, a party asserting the existence of a trust has the burden to establish by clear and convincing proof that the settlor intended to create a trust. Contrary to what petitioners argue, *Jones* did not change Maryland trust law or reverse *Erie R.R. Co.* v. *Tompkins*, 304 U.S. 64 (1938), and establish a different federal common law of trusts that would supercede the laws of all 50 states in church property disputes.

Under neutral principles, the Court of Appeals was required to apply Maryland trust law and the rules of summary judgment. It did so, and concluded that there were material disputes as to whether a trust was intended. (*See* Pet. App. at 35a.) It also found that there was a dispute whether personal property was even included in the trust provisions of the Discipline. (*See id.* at 18a n.19.) The circuit court ignored these fact disputes. Notably, petitioners do not even attempt to defend the partial summary judgment concerning personal property. The Court of Appeals correctly applied the neutral principles doctrine in reversing and remanding the partial summary judgment.

IV. THERE IS NO CONFLICT UNDER RULE 10

1. *There Is No Conflict With The Decisions Of This Court*: The neutral principles of law analysis followed by the Maryland Court of Appeals in this case is the same analysis that the Court of Appeals used in *Eldership I* and *II*, and that this Court approved in *Jones* and *Maryland & Virginia Eldership*. There is no conflict on an important question of federal law between the Court of Appeals' decision and relevant decisions of this Court. *See* Sup. Ct. R. 10(c).

2. *There Is No Conflict On An Important Federal Question Between the Court of Appeals' Decision and Decisions of Another State Court of Last Resort*:

Petitioners contend that this Court should grant certiorari to resolve an alleged conflict between the decision of the Maryland Court of Appeals and decisions by other states involving church property disputes. In fact, there is no conflict on any issue of federal law because both the decision below and the decisions of the other states applied the "neutral principles of law" approach of *Jones*. The cases on which petitioners rely show differences in result, but different results do not establish a "conflict" of constitutional law. Similar church property cases can involve different state property laws and different issues of fact. Such differences do not create a conflict involving an "important federal question" as required by Supreme Court Rule 10(b). Petitioners misunderstand that *Jones* did not mandate uniform property law for all states. The teaching of *Jones* and the other church property cases decided by the Court is that as long as a state applies its own law in a neutral manner to the facts of each individual case, the state complies with the First Amendment.

Thus, the three Georgia and Louisiana cases relied on by petitioners as establishing a "conflict" involved state laws that differed from Maryland law. No federal law conflict is involved. In both *Carnes* v. *Smith*, 222 S.E.2d 322 (Ga. 1976), *cert. denied*, 429 U.S. 868 (1976), and *Crumbley* v. *Solomon*, 254 S.E.2d 330 (Ga. 1979), the courts relied on Georgia statutes providing that property held by a local church shall be held "'according to the mode of church government'" and "'subject to the authority of the church or religious society.'" *Carnes*, 222 S.E.2d at 327-28 (quoting the Georgia statutes); *Crumbley*, 254 S.E.2d at 332-33 (same). Similarly, in *Fluker Community Church* v. *Hitchens*, 419 So. 2d 445 (La. 1982), the Louisiana Supreme Court relied on a state statute that expressly dealt with the role that a denominational constitution plays in church property disputes. *See id.* at 447-48.

Two remaining cases relied on by petitioners involve differences in *evidence*. In *Church of God Pentecostal, Inc.* v. *Freewill Pentecostal Church of God, Inc.*, 716 So. 2d 200 (Miss. 1998), the Mississippi Supreme Court ruled in favor of a local church on the basis of the *evidence* presented that the local church did not hold the property in trust. The "facts and circumstances" inquiry that the Mississippi court conducted, *id.* at 207, is exactly what the Maryland Court of Appeals ordered here.

Similarly, in *Parent* v. *Roman Catholic Bishop*, 436 A.2d 888 (Me. 1981), the Maine Supreme Court upheld summary judgment against a local church because there was no evidence presented by the local church to refute that the general church held title to the property. *See id.* at 890. By contrast, in this case, it is undisputed that From the Heart is the titleholder.

Moreover, the two principal cases relied on by petitioners to establish a "conflict" have not been followed in their own jurisdictions. The petition asserts that *African Methodist Episcopal Zion Church v. Zion Hill Methodist Church, Inc.*, 534 So. 2d 224 (Ala. 1988) ("*Zion Hill*") "presents the starkest conflict with the Maryland Court of Appeals' decision." (Pet. at 14.) However, petitioners fail to disclose that the Alabama Supreme Court and the intermediate appellate court in Alabama have *not* followed *Zion Hill*. Ten years after the decision in *Zion Hill*, the Alabama Supreme Court decided *Haney's Chapel United Methodist Church v. United Methodist Church*, 716 So. 2d 1156 (Ala. 1998) ("*Haney's Chapel*"), and refused to award local church property to a denomination after the local congregation withdrew from the parent church. In *Haney's Chapel*, the denomination claimed title to the local church property on the basis of the hierarchical relationship of the local and national church and the denomination's Book of Discipline that required all property of the local church to be held in trust for the denomination. *See id.* at 1157. The Alabama Supreme Court based its decision on the *trial record* (not on summary judgment) where the evidence showed that the local church was not, in fact, in a hierarchical relationship with the denomination, and that the deeds conveyed the property to the local church – not in trust to the denomination. *Zion Hill* was rejected as authority because it did not involve *any* deed. *See id.* at 1158. Thus, the case that petitioners cite as the "starkest conflict" turns out to have been rejected by the same court that authored it.[4]

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4. Even *Zion Hill* itself did not hold that the language from the Book of Discipline on which petitioners rely was determinative. Rather, that court relied on extensive evidence in the record at trial – including other documents and the testimony of numerous witnesses on the issue of consent to hold property in trust. *Zion Hill*, 534 So. 2d at 225-26. This is exactly the kind of inquiry that the Maryland Court of Appeals directed the circuit court to undertake in this case.

AME Zion also relies on the 1976 Georgia decision in *Carnes*. (*See* Pet. at 12-13.) However, in a later decision – which AME Zion does *not* cite – the Georgia Supreme Court held that where a local church did *not* deed its property in trust to the denomination, the local church *retained* its property when it withdrew, despite the requirement in the Discipline that property deeds must contain trust clauses. *See Coles v. Wilburn*, 245 S.E.2d 273, 274 (Ga. 1978).

In short, there is no conflict.

V. THE ASSERTION THAT A TRIAL WILL BE UNCONSTITUTIONALLY INTRUSIVE IS UNFOUNDED

There is not the slightest support in the record for petitioners' assertions that the Court of Appeals' decision "throws open the floodgates," (Pet. at 23), and that the remand proceeding will be "freewheeling," (*id.* at (i)), or a "standardless romp" through matters of religious doctrine, (*id.* at 19), or "invasive and unconstitutional." (*Id.* at 8.) This parade of hyperbole in the petition is based entirely on speculation. There is not a scintilla of factual support or any citation to the record that a trial of the property dispute under neutral principles of law will be unconstitutionally intrusive. Maryland courts have been applying the same neutral principles doctrine since *Eldership I* was decided, without any constitutional impediment.

Petitioners speculate that a judicial determination as to whether they waived the trust provisions of the Discipline would result in "an improper examination of church doctrine, governance and practice." (Pet. at 6.) Petitioners are in error. Waiver is a recognized defense, *see* Md. R. Civ. P. 2-323(g),

and the evidence of record is that petitioners waived the trust provision of the Discipline. The evidence consists of a *published* admission by AME Zion. (*See* Pet. App. at 19a n.20.) Waiver is also a defense to the blunderbuss charges of conspiracy, fraud, usurpation, etc. raised by petitioners in their consolidated countersuit. *See* Complaint of Phil.-Balt. Annual Conf. & Full Gospel A.M.E. Zion Church at 24-32.

Petitioners argue contradictory positions. They agree, as they must, that the Constitution prohibits "determining ecclesiastical questions," quoting *Hull Memorial Church*. (Pet. at 16.) Nonetheless, they argue that courts must defer to the trust provisions of the Discipline *because* it represents church doctrine. (*Id.* at 9.) The plain fact is that no case cited by petitioners, and none that counsel for respondents is aware of, has prohibited a trial of a *property* dispute because one or more of the parties were churches. As the Court of Appeals recognized, the trial court must conduct its inquiry "in purely secular terms without relying 'on religious precepts in determining whether . . . the parties have intended to create a trust.'" (Pet. App. at 28a (quoting *Jones*, 443 U.S. at 604).)

In effect, petitioners seek an advisory opinion in an interlocutory proceeding on the basis of speculative arguments that the Maryland courts will violate constitutional rights. (*See* Pet. at 20 n.3.) Certiorari should not be granted to remake constitutional law based on hypothetical issues that may never arise. At a minimum, this Court should have the benefit of a screening of those issues by the Maryland state courts. The petition simply assumes that Maryland judges and juries will disregard the Constitution. The assumption is unwarranted.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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